King's Fire Protection, Inc. and its alter ego Warrior Sprinkler, LLC *and* Road Sprinkler Fitters, Local Union No. 669, U.A. AFL–CIO. Cases 05–CA–036094 and 05–CA–036312

September 27, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND BLOCK

On July 28, 2011, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondents and the Charging Party filed exceptions and supporting briefs. The Acting General Counsel filed an answering brief and the Charging Party filed a brief in opposition to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, as modified,[1] and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondents, King's Fire Protection, Inc., and Warrior Sprinkler, LLC, Mechanicsburg, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize the Union as the exclusive collective-bargaining representative of all employees in the bargaining unit described below.

(b) Refusing to bargain with the Union regarding the terms of a collective-bargaining agreement to succeed its contract with the Union which expired on March 31, 2010.

(c) Making changes to employees' wages, benefits, and other terms and conditions of employment without first notifying and bargaining in good faith with the Union to either agreement or impasse.

(d) Refusing to participate in the grievance and arbitration procedure under the parties' collective-bargaining agreement which expired on March 31, 2010.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All Journeymen Sprinkler Fitters and Apprentices

[1] We affirm the judge's conclusion that the parties had a bargaining relationship governed by Sec. 9(a) of the Act, rather than Sec. 8(f), when the Respondents unlawfully terminated that relationship and failed to abide by all of the terms of an extant bargaining agreement. In doing so, we rely solely on the language of the parties' January 18, 2005 assent and interim agreement, which comported with the requirements set forth in *Central Illinois Construction (Staunton Fuel)*, 335 NLRB 717 (2001), for establishing a bargaining relationship under Sec. 9(a) in the construction industry. We therefore find it unnecessary to pass on whether the parties' March 23, 2001 agreement, or a 1954 Board certification of a multiemployer bargaining unit with which Respondent King's Fire Protection was temporarily affiliated, also prove the establishment of a 9(a) bargaining relationship.

Because the 2005 agreement conclusively established the parties' 9(a) relationship, we need not consider extrinsic evidence concerning the parties' intent. *Staunton Fuel*, 335 NLRB at 720 fn. 15. We note, however, that there is no probative extrinsic evidence that the Union lacked majority support when the 2005 agreement was signed. The only evidence arguably addressing the issue of majority support, other than the 2005 agreement, was the following question and answer at the hearing:

> Q. At any time since March 23, 2001, when that agreement was signed, has Mr. Kantner or any other union representative presented any documents to you to show their union majority status?
>
> A. No, I have not.

This response by the Respondents' chief witness to their counsel's question did not address the 2005 agreement or controvert that agreement's recitation that "the Union offered to provide the Employer with confirmation of its support by a majority of such employees."

As previously stated in his dissenting opinion in *DiPonio Construction Co.*, 357 NLRB 1206, 1206 fn. 3 (2011), Member Hayes would overrule *Central Illinois Construction (Staunton Fuel)*, 335 NLRB 717 (2001), and would apply the holding of *Nova Plumbing Inc. v. NLRB*, 330 F.3d 531, 534 (D.C. Cir. 2003), that contractual language alone is insufficient to establish a 9(a) bargaining relationship in the construction industry. Contrary to his colleagues, absent extrinsic evidence that the Union had majority employee support when the 2005 agreement was executed, he would therefore find the language of this agreement insufficient to establish a 9(a) relationship. Further, he would affirm the judge's finding that the parties' 2001 agreement established an 8(f) relationship, but he would find, contrary to the judge, that the subsequent designation of National Fire Sprinkler Association as the Respondents' bargaining agent did not establish or reaffirm the existence of a 9(a) relationship based on a 1954 Board certification. Accordingly, Member Hayes concurs in finding that the Respondent violated Sec. 8(a)(5) only to the extent that it failed to apply terms of the parties' 2007–2010 contract prior to its expiration.

[2] In his remedy, the judge mistakenly indicated that the parties stipulated that King's Fire Protection "continued to follow the 2010–2013 collective-bargaining agreement," even after it purportedly terminated its bargaining relationship with the Union in March 2010. The stipulation was that King's Fire continued to abide by the terms of the parties' expired 2007–2010 agreement, the last contract into which they entered. We will therefore revise the judge's remedial order to require the Respondent to apply the terms of employment established by the 2007–2010 agreement until the parties reach a new agreement or impasse, and to bargain with the Union for a new contract. The order's make-whole requirements will be based on those terms of employment.

(b) On request of the Union, rescind any changes to employees' terms and conditions of employment made on or after April 1, 2010, and retroactively restore terms and conditions of employment, including wage rates and benefit plans, to what they were prior to April 1, 2010.

(c) Make whole all bargaining unit employees to the extent they have suffered any losses in pay and benefits as a result of the Respondents' unlawful conduct, including losses to the Union's health and welfare, pension, and other benefit funds, occurring on or after April 1, 2010, with interest, in the manner set forth in the remedy section of the judge's decision. Amounts due shall be computed based on the terms of employment established in the collective-bargaining agreement effective between April 1, 2007, and March 31, 2010.

(d) Participate in the grievance and arbitration procedure under the collective-bargaining agreement which expired March 31, 2010, by agreeing to select an arbitrator as requested by the Union on March 25 and August 24, 2010.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Mechanicsburg, Pennsylvania, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other means, if the Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents has gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from the Road Sprinkler Fitters Local No. 669, U.A. AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the unit described below.

WE WILL NOT refuse to bargain with the Union regarding terms of a collective-bargaining agreement to succeed our contract with the Union, which expired on March 31, 2010.

WE WILL NOT make any changes to employees' pay, wages, and terms and conditions of employment without first notifying and bargaining in good faith with the Union to either agreement or impasse.

WE WILL NOT refuse to participate in the grievance and arbitration procedure under the parties 2007–2010 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All Journeymen Sprinkler Fitters and Apprentices

WE WILL, on request of the Union, rescind any changes to employees' terms and conditions of employment made on or after April 1, 2010, and retroactively restore terms and conditions of employment, including wage rates and benefit plans, to what they were prior to April 1, 2010.

WE WILL make whole bargaining unit employees to the extent they have suffered any losses in pay and benefits as a result of our unlawful conduct, including losses to the Union's health and welfare, pension and other benefit funds, occurring on or after April 1, 2010, with interest.

KING'S FIRE PROTECTION, INC. AND ITS ALTER EGO WARRIOR SPRINKLER, LLC

Thomas J. Murphy, Esq. and *Matthew J. Turner, Esq.*, for the Acting General Counsel.
Thomas R. Davies, Esq., of Lancaster, Pennsylvania, for the Respondent-Employer.
Natalie C. Moffett, Esq. and *William W. Osborne Jr., Esq.*, of Washington, DC, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on May 25, 2011, in Harrisburg, Pennsylvania, pursuant to a third amended consolidated complaint and notice of hearing (the complaint) issued by the Regional Director for Region 5 of the National Labor Relations Board (the Board). The complaint, based upon original charges and an amended charge filed on various dates in 2010,[1] by Road Sprinkler Fitters Local Union No. 669, U.A. AFL–CIO (the Charging Party or the Union), alleges that King's Fire Protection, Inc., and its alter ego Warrior Sprinkler, LLC (the Respondents, Respondent King's, or Respondent Warrior), has engaged in certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondents filed a timely answer to the complaint denying that they had committed any violations of the Act.

Issues

The complaint alleges that the Respondents violated Section 8(a)(1) and (5) of the Act when they failed and refused to apply the terms and conditions of the April 1, 2007, through March 31 collective-bargaining agreement with the Union and specifically ceased making contributions to the contractual benefit funds. Additionally, the complaint alleges that the Respondents refused to participate in the grievance and arbitration procedure by selecting an arbitrator, and effectively withdrew recognition from the Union in violation of Section 8(a)(5) and (1) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel,[2] the Charging Party, and the Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents are corporations with an office and place of business located in Mechanicsburg, Pennsylvania, and have been engaged in the construction industry as fire sprinkler contractors. Respondents in conducting their business operations provided services valued in excess of $50,000 directly to customers located outside the State of Pennsylvania. The Respondents admit and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On or about August 10, 2009, Respondent Warrior was established by Respondent King's as a subordinate instrument to, and a disguised continuation of Respondent King's and, on or about the same date, Respondent Warrior assumed part of the fire sprinkler operation of Respondent King's.

At all material times Harry Smith has been the president of Respondent King's and his son, Douglas Smith, held the position of vice president of Respondent King's until July 3, 2009. Effective August 10, 2009, D. Smith became the president of Respondent Warrior.

Respondent King's was incorporated on March 23, 2001, while H. Smith was still employed with Triangle Fire Protection, Inc. (R. Exh. 13.) H. Smith, as the only employee, commenced work on April 1, 2001. He hired his first employee on June 4, 2001, and since that time to the present date Respondent King's has obtained and hired all of its employees through the Union.

The Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by Respondent King's. This recognition has been embodied by a recognition agreement dated March 23, 2001,[3] and in an April 1, 2007, through March 31 collective-bargaining agreement between the Union and the National Fire Sprinkler Association (NFSA) (GC Exh. 21), an organization composed of employers in the construction industry whose purpose exists in negotiating and administering collective-bargaining agreements. Respondent King's agreed to coverage under the collective-bargaining agreement that was governed by Section 9(a) of

[1] All dates are in 2010, unless otherwise indicated.

[2] The motion of all parties, as set forth in fn. 1 of the Acting General Counsel's posthearing brief is granted. Accordingly, GC Exhs. 23, 24, and 25 are admitted into evidence.

[3] The agreement states in pertinent part that: "The Employer, on the basis of objective and reliable information, confirmed that a clear majority of the sprinkler fitters in its employ have designated, are member of, and are represented by, Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO, for purposes of collective bargaining. The Employer therefore unconditionally acknowledges and confirms that Local 669 is the exclusive bargaining representative of its sprinkler fitter employees pursuant to Section 9(a) of the National Labor Relations Act."

the Act, by virtue of a 1954 Board election and "RC" certification (GC Exh. 2).

The employee complement of Respondent King's has fluctuated from a high of 27 employees to around 5 since late 2001. The evidence establishes that on January 18, 2005, when an assent and interim agreement was signed by H. Smith with the Union (GC Exh. 4),[4] Respondent King's had 27 employees (GC Exh. 5). That number decreased to approximately 16 employees when on November 20, 2006, it designated NFSA to act as its collective-bargaining agent (GC Exhs. 7 and 8).

Additionally, H. Smith admitted and the parties stipulated that Respondent King's, despite not agreeing to be bound by the April 1, 2010, through March 31, 2013 collective-bargaining agreement between NFSA and the Union (GC Exh. 22), adheres to its terms and conditions therein and continues to remit dues (R. Exh. 12) and make benefit fund contributions to the Union (GC Exh. 15).

By letter dated December 4, 2009, the Charging Party notified Respondent King's in accordance with article 30 of the contract that it intended to terminate the agreement upon its expiration and negotiate new terms and conditions of employment for the unit to be effective April 1 (GC Exh. 9). The parties stipulated that the Respondents on or about March 11, informed the Union that it was not interested in bargaining a new collective-bargaining agreement.

B. The 8(a)(5) and (1) Allegations

1. Alter ego status

The General Counsel alleges that Respondent King's and Respondent Warrior have had substantially identical management, officers, business purpose, operations, equipment, customers, and supervision/management and are, and have been at all material times, alter egos within the meaning of the Act. It further alleges that since March 11, the Respondents have refused to meet and bargain with the Union, have effectively withdrawn recognition from the Union since on or about April 1, and have further failed and refused to adhere to the terms and conditions of the most recent collective-bargaining agreement between the parties.

Facts

The record confirms that Respondents have common ownership, officers, management, supervisors, and directors, share common premises and facilities, provide services for each other and hold themselves out to the public as a single-integrated business enterprise.[5]

Discussion

In determining whether two nominally separate employing entities constitute a single employer, the Board examines four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. No single factor is controlling, and not all need to be present. Rather, single-employer status ultimately depends on all the circumstances. It is characterized by the absence of an arm's-length relationship among seemingly independent companies. *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283–1284 (2001), and *Dow Chemical Co.*, 326 NLRB 288 (1998).

With respect to the General Counsel's theory that Respondents are alter egos, the Board utilizes additional factors and a broader standard in determining whether two ostensibly distinct entities are in fact alter egos. The Board considers whether the entities in question are substantially identical, including the factors of management, business purpose, operating equipment, customers, supervision as well as common ownership. *Crawford Door Sales Co.*, 226 NLRB 1144 (1976); *Advance Electric*, 268 NLRB 1001, 1002 (1984).

Under these circumstances, and particularly noting that the Respondents admit in their answer that they are alter egos within the meaning of the Act, I find that the General Counsel has established this relationship as alleged in paragraph 4 of the complaint.

2. Refusal to negotiate and withdrawal of recognition

Facts

H. Smith testified, without contradiction, that on March 23, 2001, he was still employed by Triangle Fire Protection, Inc., and did not employ any bargaining unit employees until June 4, 2001. He further testified that since he did not have any employees in his employ on March 23, 2001, when he executed the recognition agreement, it was impossible for a clear majority of those employees to designate the Union as their collective-bargaining representative.

Discussion

Section 8(f) of the Act permits unions and employers in the construction industry to enter into collective-bargaining agreements without the Union having established that it has the support of a majority of the employees in the covered unit.[6] The provision therefore creates an exception to Section 9(a)'s general rule requiring a showing of majority support. Section 8(f) also creates an exception to the general rule of Section 8(a)(2) and Section 8(b)(1)(A) that an employer and a union lacking majority support of unit employees may not enter into a bargaining relationship with respect to those employees. Howev-

[4] The agreement states in pertinent part that: "The Employer hereby freely and unequivocally acknowledges that it has verified the Union's status as the exclusive bargaining representative of its employees pursuant to Section 9(a) of the National Labor Relations Act, as amended, for the purpose of establishing wages, hours, and working conditions for all journeymen sprinkler fitters, apprentices and unindentured apprentice applicants in the employ of the Employer, and that the Union has offered to provide the Employer with confirmation of its support by a majority of such employees."

[5] The record shows that both Smiths (Harry and Douglas) were on Respondent King's payroll on March 18, and signed a license application for Respondent Warrior (GC Exhs. 16 and 19).

[6] Sec. 8(f) of the Act provides, in pertinent part: "It shall not be an unfair labor practice under subsection (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members . . . because (1) the majority status of such labor organization has not been established under the provisions of Sec. 9 prior to the making of such agreement."

er, at the expiration of an 8(f) contract, the employer can withdraw recognition from the union and is under no further obligation to bargain. By contrast, if the bargaining relationship exists under Section 9(a), the union retains its representative status after the expiration of the contract and the employer remains obligated to bargain, absent an affirmative showing that the union has lost its majority support. *Central Illinois Construction*, 335 NLRB 717 (2001).

In *Nova Plumbing, Inc.*, 336 NLRB 633 (2001), enf. denied 330 F.3d 531 (D.C. Cir. 2003), the D.C. Circuit rejected the Board's determination that contract language alone can establish a 9(a) relationship between a union and a construction industry employer, "at least where, as [there], the record contains strong indications that the parties had only a Section 8(f) relationship." Id. at 537. The Court found that the Board's reliance on contract language, standing alone, to establish a 9(a) relationship "runs rough shod" over the principles established in *Ladies Garment Workers v. NLRB (Bernhard-Altmann)*, 366 U.S. 731 (1961). In *Bernhard-Altmann*, the Supreme Court found that a 9(a) collective-bargaining agreement that recognizes a union as an exclusive bargaining representative must fail in its entirety where, at the time the agreement was signed only a minority of the employees actually authorized the union to represent them.

In the subject case, while the recognition agreement dated March 23, 2001, clearly states that Respondent King's recognized the Union as the 9(a) representative of its employees, the record evidence contravenes that assertion.

In this regard, based on the uncontroverted facts that Respondent King's had no employees in its employ on March 23, 2001, when the recognition agreement was executed nor was it even doing business, I find contrary to the General Counsel and the Charging Party that the bargaining relationship established on that date was not governed by Section 9(a) of the Act. *Brannan Sand & Gravel Co.*, 289 NLRB 977, 982 (1988) (the Board held that it was appropriate to inquire into the establishment of construction industry bargaining relationships outside the 10(b) period). Indeed, on March 23, 2001, it was impossible for employees of Respondent King's to establish that a clear majority designated the Union as their bargaining representative. Moreover, the recognition language found in the March 23, 2001 agreement does not state that Respondent King's recognition was based on a contemporaneous showing or offer by the Union to show, that the Union had majority support as required by *Central Illinois*. Accordingly, it cannot conclusively be found that the language in the recognition agreement established a 9(a) relationship. Rather, I find that the parties on March 23, 2001, established an 8(f) collective-bargaining relationship. In summary, I find only that the recognition agreement dated March 23, 2001, did not exclusively establish a 9(a) bargaining relationship.

As set forth in *Central Illinois*, the parties to an 8(f) agreement can convert their relationship to 9(a) in any one of three ways. The union can obtain a majority vote in a Board election; an employer can make an "immediate" grant of 9(a) recognition when the union proffers a showing of majority support; or the parties can rely on a third option—agree on contract recognition language committing the employer to recognize the union as 9(a) representative if and when the union proffers a showing of majority support during the contract's term, with the union subsequently making the required showing.

The evidence shows that on January 18, 2005, Respondent King's voluntarily executed a 9(a) recognition agreement by which it "freely and unequivocally acknowledged that it had verified the Union's status as the exclusive bargaining representative of its employees pursuant to Section 9(a) of the Act and the Union offered to provide the Employer with confirmation of its support by a majority of such employees." That language comports with the *Central Illinois* criteria established by the Board to attain 9(a) status.[7] Additionally, when Respondent King's joined the NFSA national multiemployer bargaining unit for the purpose of negotiating the April 1, 2007, through March 31 agreement, it reaffirmed its 9(a) relationship with the Charging Party. In this regard, the NFSA/Charging Party collective-bargaining agreement that Respondent King's executed on April 1, 2007, was governed by Section 9(a) by virtue of the 1954 Board representation "RC" certification. Therefore, Respondent King's merged its preexisting 9(a) single-employer unit into the multiemployer bargaining unit and relationship. Although Respondent King's withdrew from the multiemployer bargaining unit prior to April 2010 for purposes of bargaining the 2010–2013 collective-bargaining agreement, it did so as a 9(a) employer contractor. *Jim Kelley's Tahoe Nugget,* 227 NLRB 357 (1976), enfd. 584 F.2d 293 (9th Cir. 1978), cert. denied 430 U.S. 933 (1979).

Section 10(b) of the Act precludes inquiry as to the lawfulness of recognition granted under Section 9(a) of the Act outside the 10(b) period that was not challenged within the 10(b) period. *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411 (1960); *Strand Theatre of Shreveport Corp.*, 346 NLRB 523, 53–537 (2006), enfd. 493 F.3d 515 (5th Cir. 2007). Likewise, an employer that has designated a multiemployer association as its collective-bargaining representative will be bound by any agreement reached by the association, but the agreement will not be binding as anything other than an 8(f) agreement in the absence of showing that a majority of the employees in the employer's covered work force has manifested their support for the union before the employer became bound by the agreement. *Comtel Systems Technology, Inc.*, 305 NLRB 287 (1991). Here, the evidence conclusively establishes that in 2005 and 2007, a majority of Respondents employees expressed their support for the Union.

The Board has also held that, the presumption of majority status flowing from the contract in a multiemployer unit survives a respondent employer's timely withdrawal from that unit In *Casale Industries*, 311 NLRB 951, 953 (1983), the Board held that:

> Parties in nonconstruction industries, who have established and maintained a stable Section 9 relationship, are entitled to protection against a tardy attempt to disrupt their relationship.

[7] H. Smith knew that a majority of his employees supported the Union as their collective-bargaining representative pursuant to Respondent King's benefit contribution report that it submitted to the Union in January 2005 (GC Exh. 5).

> Parties in the construction industry are entitled to no less protection. Accordingly, if a construction industry employer extends 9(a) recognition to a union, and 6 months elapses without a charge or petition, the Board should not entertain a claim that majority status was lacking at the time of recognition.

The Board explained that a contrary rule would mean that longstanding relationships would be vulnerable to attack, and stability in labor relations would be undermined.

Under these circumstances, and particularly noting that Respondents have not raised a challenge to the 9(a) recognition of the Union in a timely manner, I find that the collective-bargaining relationship between Respondents and the Union has been since 2005, and is currently governed, by Section 9(a) of the Act.

Based on the above, I find that the Respondents violated Section 8(a)(5) and (1) of the Act when they withdrew recognition from the Union, repudiated the collective-bargaining agreement, and ceased making contributions to the contractual benefit funds.

3. Refusal to select an arbitrator

The Acting General Counsel alleges that on or about March 25 and August 24, the Union by mail requested that Respondent King's participate in the grievance and arbitration procedure by selecting an arbitrator per the procedure in article 25 of the parties' collective-bargaining agreement (GC Exh. 10). In its answer to the complaint, Respondents admit that it did not participate in the grievance arbitration process to select an arbitrator.

Discussion

Based on my finding above that the parties had a 9(a) bargaining relationship, the obligation to negotiate continues after the contracts expiration unless and until the Union is shown to have lost majority support. *Levitz Furniture Co.*, 333 NLRB 717 (2001). Here, not only did the Respondents refuse to participate in selecting an arbitrator which it admits while the collective-bargaining agreement was still in effect, it also refused to engage in the selection process after its expiration on March 31. Moreover, as found above, the Charging Party remains the exclusive collective-bargaining representative of Respondents employees.

Accordingly, I find that the Respondents violated Section 8(a)(5) and (15) of the Act when it refused to participate in the selection of an arbitrator as required under article 25 of the parties' collective-bargaining agreement. *Oliver Insulating Co.*, 309 NLRB 725 (1992); *City Cartage Co.*, 266 NLRB No. 80 (1983) (not reported in Board volumes).

CONCLUSIONS OF LAW

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to recognize the Union as the collective-bargaining representative of all employees in the unit and by failing to apply their collective-bargaining agreement with the Union, the Respondents as alter egos, violated Section 8(a)(1) and (5) of the Act.

4. By refusing to participate in the selection of an arbitrator pursuant to the parties' collective-bargaining agreement, the Respondents violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondents are alter egos who engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be required to recognize and, on request, bargain with the Union as the collective-bargaining representative of all employees performing work, as set forth in the parties' most recent collective-bargaining agreement. The Respondents shall also be required to make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondents' failure to apply the collective-bargaining agreement between the Association and the Union as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Likewise, having found that the Respondents violated Section 8(a)(1) and (5) of the Act by failing to continue in effect all the terms and conditions of their existing collective-bargaining agreement by failing, since April 1, 2010, to make the contractually required contributions to the Union's fringe-benefit funds set forth in the collective-bargaining agreement, I shall order the Respondents to make all required benefit fund contributions since April 1, 2010, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).[8] In addition, the Respondents shall reimburse unit employees for any expenses resulting from the Respondent's failure to make the required contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

[Recommended Order omitted from publication.]

[8] I note, per the parties stipulation, that between April 1 and April 1, 2011, Respondent King's continued to follow the 2010–2013 collective-bargaining agreement and made monthly payments to the Union's contractual benefit funds. Additionally, during that same period, Respondent King's remitted employee dues to the Union. Further, the parties stipulated that Respondent Warrior did not apply the 2007–2010 collective-bargaining agreement to its employees. Accordingly, under these circumstances, I will leave to compliance the amount of benefit fund contributions that are due and owing to Respondents' employees.